By Mr. STEVENSON:

S. 1435. A bill to amend the Communications Act of 1934 to ban sports from closed-circuit television. Referred to the Committee on Commerce.

Mr. STEVENSON. Mr. President, I introduce for appropriate reference a bill to amend the Communications Act of 1934 so as to prohibit the closed circuit TV broadcast of any sports event to a paying audience outside the home, except when the FCC determines that it is not commercially feasible for the event to be broadcast on free TV.

No event in recent memory points up the need for this bill more than the recent championship fight between Joe Frazier and Muhammad Ali. The promoter of the fight said that it was "more than just a famous boxing match—it is one of the great entertainment events in history."

Perhaps it was—for the 19,500 persons who paid up to $150 each to watch the fight live in Madison Square Garden and for the 1½ million viewers who watched the fight in theaters all across the country at prices ranging from $10 to $30.

But for the Nation's 118 million other sports fans, the main event was a quasi-event—something that could be read about the next morning, but which could not be seen while it happened. Invalids missed the fight, as did people who could not afford the price of a ticket. Because the Defense Department refused—rightly in my judgment—to pay the $500,000 demanded by the promoters, our men in Vietnam missed the telecast, too.

The promoter explained why the home TV audience was denied access to the fight with this forthright statement:

> We're in this for the profit, and we're merchandising this fight like a fight has never been merchandised before.

The merchandising effort was a spectacular success; the $20 million gross will undoubtedly leave a handsome profit even after Frazier and Ali receive $2.5 million each for their night's work.

The financial implications of this fight are likely to excite greater activity on the part of sports promoters. It has been predicted that within 5 years the super bowl will be broadcast on closed circuit TV, with a prospective gross of $48 million. Other major sports events—the world series, the basketball and hockey playoffs, the Kentucky Derby—could likewise disappear from home television screens.

I recognize that this may be very good for the promoters, but the central fact about closed circuit theater TV is that it is closed. It is not necessary to shut out the public at large to assure fair compensation for those who promote and compete in sports events. Home television offers ample opportunities for financial rewards to those involved and also offers the American people easy access to national sports events.

Closed circuit theater TV raises other problems: overselling; ticket scalping; and the crowd control problems created when transmission fails at a crucial moment, as it did in Chicago before the Frazier-Ali fight.

Under existing law, the FCC cannot regulate sports promoters or closed circuit television operations. The profit motive determines the format in which sports events are staged. This bill, introduced in substantially the same form by Representative ASPIN in the other body, recognizes the greater interest of the television viewing public. It would prohibit closed circuit TV coverage of sports events, except when the FCC concludes that broadcasts to home TV viewers are not commercially feasible. The bill would, therefore, effectively encourage free television coverage of sports events for the American public.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1435

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Sports Broadcasting Act."

SEC. 2. Title III of the Communications Act of 1934 is amended by redesignating parts III and IV as parts IV and V, respectively, and by inserting after part II the following new part:

"PART III—CLOSED-CIRCUIT TELEVISION

"RESTRICTION ON SPORTS PRODUCTIONS

"SEC. 371. (a) For purposes of this section, the term 'closed-circuit television production' means any television production which is intended to be viewed principally by an audience outside the home and for which there is an admission charge.

"(b) (1) No person may present any sports event to the public by means of a closed-circuit television production, except when the person proposing to so present such event has applied to the Commission to present such event, and such application has been approved by the Commission in accordance with subsection (2) of this section.

"(2) The Commission may approve an application to present a sports event by means of a closed-circuit television production only if the Commission is satisfied (A) that the rights to broadcast such event have been offered on reasonable terms to an adequate number of television networks or licensees (or their representatives) and (B) because of lack of interest on the part of the public, it is not commercially feasible for the event to be presented to the public by means of a broadcast for which no charge is made to the broadcast audience. Such approval shall be subject to such terms and conditions (including conditions with respect to any admission charge) as the Commission may prescribe in the public interest.

"(d) The Broadcast Bureau of the Commission shall administer the provisions of this section.

"(e) The Commission may prescribe such regulations as may be necessary to carry out this section."

SEC. 2. The amendments made by the first section of this Act shall take effect on the thirtieth day after the date of enactment of this Act.

By Mr. ERVIN (for himself, Mr. BAYH, Mr. BENTSEN, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. INOUYE, Mr. HRUSKA, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MCGEE, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXMIRE, Mr. RANDOLPH, Mr. SCOTT, Mr. SPARKMAN, Mr. SPONG, Mr. STEVENS, Mr. TAFT, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TUNNEY, Mr. WILLIAMS, Mr. HUMPHREY, Mr. MUSKIE, and Mr. HATFIELD):

S. 1438. A bill to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy. Referred to the Committee on the Judiciary.

PROTECTION OF CONSTITUTIONAL RIGHTS OF GOVERNMENT EMPLOYEES—TO PREVENT UNWARRANTED INVASIONS OF THEIR PRIVACY

Mr. ERVIN. Mr. President, on behalf of myself and 50 cosponsors, I introduce, for appropriate reference, a bill to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

The other cosponsors of this proposal are: Senators BAYH, BENTSEN, BIBLE, BROOKE, BURDICK, BYRD of Virginia, CHURCH, COOK, DOLE, DOMINICK, EAGLETON, FANNIN, FONG, GOLDWATER, GRAVEL, GURNEY, HANSEN, HATFIELD, HRUSKA, HUMPHREY, INOUYE, JORDAN of North Carolina, JORDAN of Idaho, MCGEE, MCINTYRE, MAGNUSON, MATHIAS, METCALF, MILLER, MONDALE, MONTOYA, MOSS, MUSKIE, NELSON, PACKWOOD, PEARSON, PERCY, PROUTY, PROXMIRE, RANDOLPH, SCOTT, SPARKMAN, SPONG, STEVENS, TAFT, TALMADGE, THURMOND, TOWER, TUNNEY, and WILLIAMS.

This is the third Congress to consider this proposal. It has been twice passed by the Senate, first as S. 1035 in the 90th Congress on September 13, 1967, by approval of 90 Members, and then as S. 782 in the last Congress, on May 19, 1970, by unanimous consent. Each time, despite widespread support from the public, from employees, and from Members of Congress, it has failed in the House Post Office and Civil Service Committee. The bill introduced today is identical to S. 782 as passed by the Senate last year with committee amendments.

The purpose and background of this measure is spelled out in Senate Report No. 873 of the 91st Congress which

describes the hearings before the Constitutional Rights Subcommittee on complaints we received about privacy invasions.

The purpose of this bill is to prohibit indiscriminate requirements that employees and applicants for Government employment disclose their race, religion, or national origin; or submit to questioning about their religion, personal relationships or sexual attitudes, through interviews, psychological tests, or polygraphs. It prohibits requirements that employees attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; support political candidates, or attend political meetings.

It makes it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits requirements that he disclose his own personal assets, liabilities, or expenditures, or those of any member of his family, unless, in the case of certain specified employees, such items would tend to show a conflict of interest.

It provides a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings.

It accords the right to a civil action in a Federal court for violation or threatened violation of the act.

Finally, it establishes a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties.

I and the other sponsors of this measure share the conviction that the early passage of the bill, this time by both the Senate and the House, will demonstrate the truth of Victor Hugo's observation that greater than the tread of mighty armies is an idea whose time has come.

The American people have made it clear that the time has indeed come for congressional action to protect them from governmental interference with their enjoyment of personal privacy and other constitutional rights.

During recent hearings before the Constitutional Rights Subcommittee, we have received reports of well-meaning, but unwarranted surveillance of lawful citizens, of blacklists, of data banks without proper controls, of the misuse of computers and microfilmed records, and other incursions into private lives of people without sufficient cause.

All across our land, private citizens and Government officials alike are awaking to the fact that they must seize control of the information systems and the new technology to assure due process of law. They are realizing that if our society is to remain a free one, they must continuously monitor the exercise of any governmental power which can infringe upon the first amendment rights of all individuals.

Although the privacy of private citizens is receiving increasing legislative attention, the liberties and privacy of citizens who work for Government have generally remained in unique isolation from such concern. More than most Americans, the employees of the Federal Government understand the adverse effects on liberty of some of the trends abroad in our land today. Probably no other group of citizens has been so subject to governmental monitoring, investigation and evaluation of their private lives. They have been analyzed, computerized, criticized, and all too frequently, tyrannized. Some of this data-gathering on employees and applicants is both necessary and desirable, and is pursued in a worthy cause such as determining suitability for employment or for handling national security information or for promoting better personnel management. On the basis of subcommittee studies, however, it is my opinion that a goodly portion of the data-gathering and surveillance goes far beyond the needs of Government and is prompted by the mere curiosity of some Government officials or by the political motives and concerns of whatever administration is in power at the time.

Since they are, in a sense, a captive group, easily identified, and susceptible to economic coercion to surrender their privacy, employees of Government are subjected more than most citizens to Federal management experiments with all of the latest fads in psuedo-scientific instruments and methods for measuring the "total man," for predicting human behavior, and for attempting to manipulate the emotions and the faculties of individuals in order to guide their thought processes.

They are subjected to the changing fashions in follies of supervisors who are bent on achieving some favored personal or management goal through bizarre short cuts or circumvention of established systems for protecting employee rights.

The individual's access to the courts on such matters has been limited, and any administrative remedies have been subject to changing executive orders or agency directives. Employees are confronted with orders that they are not to communicate with Members of Congress and they are restricted in their dealings with personnel officers for resolving their problems.

For all of these reasons, employees do not always enjoy due process, privacy, and other rights equally with all other citizens.

Recently, as the Federal Government has seized larger and larger chunks of the economic sector, citizens who work for it have been subjected to economic coercion to surrender their liberties for purposes which have no reasonable relationship to the needs of Government. These liberties do, however, have a significant relationship to the health of our free society. If over 3 million Federal employees and their families can be forced to surrender them without any recourse to the courts, then they can be surrendered by millions of State and local employees. Since the attitudes and practices of the Federal Government are emulated by private industries and organizations, the injustices and tyrannies against employees ignored by Congress today may spell the destruction of the basic liberties of all citizens tomorrow.

This bill does not begin to cure all of the injustices and petty tyrannies to which employees are subject. Rather, it establishes judicial and administrative remedies for certain violations of first amendment rights of the citizen who may apply for Federal employment or who may work for Government.

It is designed to protect that individual in the enjoyment of his freedom of conscience, of his right to speak or not to speak about certain personal matters; of his right to participate or not to participate in the political, economic, and social life of his community free of pressure from the Civil Service Commission or from his supervisor.

It assures that employees may keep to themselves what they believe or feel about religion, sex, or family relationships or what they do or do not do in their private lives, that is unrelated to their jobs. It assures also that they will never be forced as free citizens to become the unwilling instruments for imposing unauthorized political, social or economic goals of some administration which happens to be in power at the time in Washington.

In an era dominated not only by scientific technology but by the need for rapid and efficient decisionmaking on a grand scale, this proposal is a means of reconciling the needs of Government with the individual's right to retain certain areas of his thoughts, beliefs, words and actions, free of unwarranted governmental interference.

Such legislation has been needed in the past to help protect our liberties. It is needed now. If the present trends in the Federal Government are any indication, it will be more vitally needed in the future.

Although the bill is based primarily on the excesses of previous administrations, there is no guarantee that these practices will not be revived, and there is no evidence that some of them are not continuing.

If history teaches us anything, it teaches us that the events of the past will be repeated. With regard to the practices covered by this proposal, I believe Congress should prevent their reoccurrence by early passage of the bill.

Mr. President, when this bill was first introduced in 1966, I had a conference with the distinguished former chairman of the Committee on Post Office and Civil Service, Senator Monroney. Pursuant to our conversation, he agreed with me that the bill could be appropriately referred to his committee or the Committee on the Judiciary, and the bill was referred by unanimous consent to the Committee on the Judiciary which conducted hearings on the bill. In 1969, I consulted with the present distinguished chairman of the Committee on Post Office and Civil Service, the able Senator from Wyoming (Mr. McGEE). He agreed with me that a similar course should be followed on S. 782 at that time and it is my understanding that he continues to hold that view with respect to the current bill.

Therefore, I ask unanimous consent, pursuant to the agreement between Mr. McGEE and me, that the bill be referred to the Committee on the Judiciary; and that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1438

A bill to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin *or citizenship* of any such employee *or person or of his forebears,* when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: Provided, however, That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from elicit-

ing such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United tSates Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 4. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of $75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or no behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice.

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is

authorized to make under subsection (K), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of $100,000, to carry out the provisions of this section.

SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however,* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

SEC. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 10. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 11. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

By Mr. GURNEY:

S. 1439. A bill to establish a Judiciary Assistance Administration within the Department of Justice, to provide financial assistance to the States in order to encourage court reform, and for other purposes. Referred to the Committee on the Judiciary.

Mr. GURNEY. Mr. President, I am today introducing a bill intended to assist the States in reforming and modernizing their court and judicial systems. The act which I call the National Court Reform Assistance Act, will create within the Department of Justice a Judicial Assistance Administration which will act as a clearinghouse for information, statistical data and studies on improvement of States' judicial machinery, civil and criminal. The Administration would be authorized to carry out a 5-year grant program to the States and localities with substantial sums of money.

If this Nation is ever to come to grips successfully with curbing of crime, we must mount a massive attack on crime, We must assign high priority to the problem. We must make a national commitment. We must put up the necessary money to do the job. I have tried to do this in a bold fashion. The functions of assisting in State court reform now being carried on by the Law Enforcement Assistance Administration would be assigned to the new Judicial Assistance Administration created by this bill.

As it now stands, LEAA plans to spend 10 percent of its budget or roughly $35 million per year on activities specifically related to State court reform and modernization. Those sums in my judgment are woefully inadequate. If we are to achieve meaningful reform, we must assist the States with more realistic sums. For Mr. President, we should make no mistake about it: the State and local court systems in our Nation today are being strained to the breaking point. We have a judicial crisis on our hands.

The common law maxim that "justice delayed is justice denied" is self-evidently true in our country today as it has never been in the past.

There is a growing awareness that our courts, State and Federal, are in a deplorable condition and that condition in the State courts, at least, is approaching crisis proportions. The columns of our legal publications which in happier times were full of comfortable recollections of "famous jurists I have known" and stories of clever cross-examinations by eminent attorneys, now are full of stories of incredible delays, miscarriage of justice. This is, it seems to me, growing lack of confidence by the public in the ability of our courts to administer justice. The operative word is "crisis."

In a special edition of the New York Law Journal for Law Day, May 1, 1970, Mr. Martin Fox said:

"Crisis", until only recently, was a word rarely used to describe the state of the courts in New York City. When discussing such problems in the courts as overcrowding, inadequate facilities, case backlogs and calendar congestion and insufficient funds, judges, lawyers, and court personnel preferred to describe them as "pressing", "serious", and "of immediate concern", but almost never of "crisis" proportions.

But these synonyms have now been discarded and crisis has joined the vocabulary of the courts. The urgency of these problems, coupled with the need for a full-scale review of their causes designed to produce possible remedies, was underscored in recent weeks by the following actions:

(a) The unprecedented establishment of eleven blue-ribbon committees by Presiding Justice Harold A. Stevens of the Appellate Division, First Department, to study all aspects of the courts in New York and Bronx Counties and to recommend methods for improvements in areas such as public relations, calendars, facilities, financing and removing such cases as prostitution and alcoholism from the Criminal Calendars.

(b) An order from the U.S. Court of Appeals for the Second Circuit asking district attorneys, judges and court officials from throughout the city and adjacent counties to file briefs as to the number of persons in detention for more than three months awaiting trial and the reasons for this. These delays raise "serious questions of the violation of constitutional rights," Chief Judge J. Edward Lumbard said.

(c) A report by the Vera Institute of Justice showing that there were 18 per cent more cases in the Criminal Courts in 1968 than in 1959, while the rate of disposition fell 19 per cent over the same period. There was a backlog of more than a half million cases in the Criminal Courts, according to the report.

When we heave a backlog of more than half a million criminal cases in the courts of New York City, we know something is wrong.

In the August 7, 1970, issue of Life, Mr. Dale Wittner spoke of the logjam in the courts of the city of New York again in crisis terms:

The criminal courts of troubled urban America are failing. Like once-fearsome scarecrows put out to keep away birds of lawlessness, they are tattered by neglect, familiar and even accommodating to professional hoodlums and incorrigible terrorists of society who walk free for months and years, waiting for trials that never come. To the innocent, the poor, the uneducated, to the victims of crime and witnesses to it, and to honest policeman, many big-city courts are already a sham and a broken promise. So strained, so clogged with humanity have they become that substantial justice is only an occasional, almost accidental, product. A system drafted nearly two centuries ago to protect four million people does not work for 200 million. Until it does again, until swift and equal justice is restored, the prospect for law and order in the streets will not improve.

In every major city, the symptoms are the same. Crime increases at an average rate of 14% a year, more than doubling every six years. Court backlogs of pending cases, which 10 years ago were measured in weeks, now add up to months and years. Harried judges, prosecutors and public defenders are forced to treat each case like a piece of unimportant manufacture on an endless assembly line. Prosecutors are haphazard. Justice is the sub-

ject of bargaining. The possibility of punishment diminishes—and with it, respect for the law.

Mr. Wittner continues:

If the criminal courts are in bad shape in almost every city, the place to see the chaos most clearly is New York, the nation's largest city. There, sheer weight of numbers has bowed the system to the breaking point and criminal justice has already lost its cherished precepts: the protection of society, the presumption of innocence, a speedy trial, a careful search for truth. Human beings are suffering—tens of thousands of them. But the true extent of New York's breakdown is seen in a dreadful array of facts:

Felonies—such as murder, armed robbery, aggravated assault, rape and burglary—increased more than threefold during the 1960's while New York City's population remained almost constant. In the same period the regular inmate population of state prisons, where convicted felons must serve their sentence, fell from almost 20,000 to about 14,000.

The city's police force has grown steadily to more than 32,000 men, by far the largest in the nation. Yet the odds in favor of a criminal escaping arrest for a felony remain about four to one.

For those arrested, the chances of avoiding punishment have actually increased: barely one in five is ever brought to court on a felony indictment. The rest are released for lack of evidence or prosecuted for less serious misdemeanors, for which the average sentence is less than four months in a city prison.

For the one criminal in 20 unlucky enough to be indicted, there is still a 10-to-one chance that the charges will be reduced before trial, especially if he is willing to plead guilty.

Thus the appalling arithmetic is that in New York City if you commit a felony, the chances of being arrested, indicted, found guilty on the original charge and then going to prison are a great deal less than one in 200.

In the year ending June 30, 1969, while felony arrests were increasing to a yearly rate of 75,000 only 608 felony trials were completed. For misdemeanors and violations, the figures were almost as bad: 18,000 sentenced to jail out of 450,000 cases.

The Criminal Court began 1969 with a backlog estimated at more than half a million cases. During the year, 20 new judges were added to alleviate congestion. Yet by the start of 1970, the backlog has risen to almost 700,000 cases and was increasing each month. For every three cases brought to court, only two are disposed of. At the current rate, it would take two and a half years to clear the calendars, assuming no new arrests were made.

Mr. President, our system of justice is predicated on the notion of a speedy trial. The right to a speedy trial is promised in the sixth amendment. The right has been federalized by the 14th amendment and is guaranteed in the Constitution and the organic law of all the States. The right is beginning to ring hollow.

The New York Times for January 7, 1971, reported that the first Federal census of the city and county jails of the country showed that 52 percent of the inmates of these jails had not been convicted of any crime: They were awaiting trial. Whether convicted or not, the report said that many of the inmates of these institutions endured less than human conditions.

Four jails which are now in use around the country were built before George Washington's first inaugural; 25 percent of all the local jails around the country are more than 50 years old.

Let me break down the figures: As of March 15, 1970, there were 160,863 persons in local, county, and city jails of whom 7,800 were juveniles.

Of these 160,863 persons, 52 percent, or 83,000 had not been convicted of any crime.

Mr. President, these figures are outrageous. It is truly offensive to our national sense of justice. We have to do something about it and do it quickly. The Law Enforcement Assistance Administration will spend about $100 million in fiscal 1971 to improve these horrendious conditions and even more in fiscal 1972. But we have to act on the causes of this condition more effectively and we have to act now. The biggest contributing factor to this deplorable situation is the backlog in the criminal courts of the States.

On February 20, 1971, Attorney General Mitchell called the administration of criminal justice in the United States "an astronishing tale of neglect." The Attorney General is obviously correct and, in my judgment, the Congress must give the Attorney General the tools to correct this situation, the money commensurate with the need.

In his address before the American Bar Association on August 10, 1970, Chief Justice Burger recalled Dean Roscoe Pound's famous speech to the ABA in 1906:

He [Dean Pound] said then that the work of the courts in the 20th century could not be carried on with the methods and machinery of the 19th century. If you will read Pound's speech, you will see at once that we did not heed his warning and today in the final third of this century, we are still trying to operate the courts with fundamentally the same basic methods, procedures and machinery he [Pound] said were not good enough in 1900. In the Supermarket Age we are like a merchant trying to operate a cracker barrel corner grocery store with the methods and equipment of 1900.

Later on in that same address, the Chief Justice gave his views on the reason for this sorry state of affairs:

The price we are now paying and will pay is partly because judges have been too timid and the bar has been too apathetic to make clear to the public and the Congress the needs of the court. Apathy, more than opposition, has been the enemy, but I believe the days of apathy are past.

The Chief Justice made some interesting comparisons which I think are worthy of noting:

The changes and improvements we need are long overdue. They will call for a very great effort and they may cost money; but if there are to be higher costs they will still be a small fraction, for example, of the 200 million cost of a C-5A airplane. The entire cost of the Federal Judicial System is 128 million dollars. Military aircraft are obviously essential in this uncertain world, but surely adequate support for the Judicial Branch is also important.

Wall Street experts recently estimated that American citizens and businesses spend more than 2 billion dollars a year on private security and crime control. Aside from the ominous implications of this in a free society, just think what 2 billion dollars could do for public programs to prevent crime and enforce law. That is where such support belongs.

More money and more judges alone is not the real solution. Some of what is wrong is due to the failure to apply the techniques of modern business to the administration or management of the purely mechanical operation of the courts—of modern record keeping, systems planning for handling the movement of cases. Some is also due to antiquated, rigid procedures which not only permit delay, but often encourage it.

The problem of delays, logjams and inefficient administration of justice is not confined to any one State, or any one area or section of our country. It is a universal crisis. It is a truly national problem demanding national solutions, and we must act at once.

There are several tools which the States and local governments should have available to them to fight this crisis. The first is, of course, money. But, over and above that, there are other tools we have it in our power to provide.

We are told constantly that this is the age of computers. Why have computers not been used to handle the paperwork of our courts? The State of Alaska has successfully experimented with computers for speeding the administration of justice. The other States can profit by this example.

We can and should experiment with the use of the parajudge and paraprofessional personnel for the disposition of pretrial motions, in discovery procedures and other procedural matters. If we were to provide for proper appellate review of such dispositions, we would be freeing judges for the work they were hired to do: sit in their trial function.

Mr. President, I ask unanimous consent to have included in the RECORD at the conclusion of my remarks, an article on this subject by the distinguished jurist, Judge Irving R. Kaufman of the U.S. Court of Appeals for the Second Circuit.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). Without objection, it is so ordered.

(See exhibit 1.)

Mr. GURNEY. Mr. President, as I see the solution, it is not a question of simply creating more judgeships. We have to provide more meaningful tools—judicial administrators, paraprofessional personnel, computers, and the like.

Mr. President, the delays in the administration of criminal justice which I think we can agree are unconscionable, are inexorably tide up with the civil calendar delays. In most jurisdictions, judges sit on both civil, and criminal cases. Delays in the civil calendars necessarily make for delays on the criminal side. If we are to reform the courts, we must address the problems of the civil cases also. Here again, paraprofessional personnel, the case of sophisticated technology, computers, and so forth and court administrators would, by easing the burdens of civil calendar, improve the administration of the criminal courts.

Mr. President, I am today introducing a bill aimed at addressing some of these gigantic problems. This bill, which I call the Court Reform Assistance Act, would establish within the Department of Justice, a Judicial Assistance Administration for the purpose of providing financial assistance to the States in order to